

The parties stipulated claimant suffered personal injury by accident on September 3, 2003, working for respondent as a building maintenance custodian. The principal issues presented to Judge Clark were (1) the nature and extent of claimant's disability, if any; and (2) whether claimant is entitled to work disability. Respondent argues claimant was able to return to his employment with no restrictions; therefore, claimant's permanent partial disability award is limited to his percentage of permanent impairment of function.

Merrill Thomas, D.O., treated claimant from September 10, 2003, to December 30, 2003, and diagnosed claimant with lumbar sprain. Claimant was released by Dr. Thomas with no permanent work restrictions and no permanent impairment. Dr. Pedro A. Murati examined the claimant one time, more than one year after the accident. Dr. Murati diagnosed claimant with low back pain with radiculopathy and concluded claimant needed permanent restrictions, including no crawling, lifting, carrying, pushing or pulling greater than 35 pounds occasionally and 20 pounds frequently. Dr. Murati, using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.), rated claimant as having a 10 percent whole person impairment.

Judge Clark concluded claimant sustained a five percent whole body functional impairment based upon a split of opinions given by the above physicians. He further found that claimant was not entitled to a work disability award because claimant returned to work for respondent and performed the same unaccommodated job that he performed before his accident.

Claimant contends since Dr. Thomas' rating was not based on the AMA Guides (4th ed.), his opinion should not be considered and only Dr. Murati's rating of a 10 percent whole person impairment should be used in calculating his functional impairment rating. Concerning the work disability issue, claimant contends he did not return to an unaccommodated job, since he modified the job as per Dr. Thomas' instructions regarding changing the way he lifted and performed other tasks.

Respondent contends Judge Clark did not err in giving weight to Dr. Thomas' rating. Respondent also asserts Judge Clark appropriately denied claimant a work disability award and correctly found that claimant was able to return to his employment with no restrictions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

On September 3, 2003, claimant suffered a work-related injury while setting up tables in the elementary school lunchroom. While attempting to set up one of the tables, he twisted incorrectly and injured his low back. Claimant reported the injury to respondent and was sent to Dr. Thomas for treatment. Dr. Thomas initially saw claimant on September 10, 2003. X-rays taken that date showed degenerative changes throughout the spine, but otherwise the spine was normal. Dr. Thomas diagnosed claimant with lumbar sprain and treated claimant with anti-inflammatory drugs and muscle relaxers, started him on physical therapy, and gave him some home exercises to perform. Dr. Thomas released claimant to return to work on October 13, 2003, but continued to see him to make sure he continued to progress.

Claimant returned to work October 13, 2003, with no restrictions. He continued to work at his job with no accommodations until November 18, 2003, at which time he was terminated for reasons not related to his work-related injury.

Claimant was released from care by Dr. Thomas on December 30, 2003, at which time Dr. Thomas found he was at "maximal medical benefit."¹ Claimant was advised to continue with home exercises and, at claimant's request, was given prescriptions for anti-inflammatory medicine and muscle relaxers. Dr. Thomas testified that claimant did not sustain any permanent impairment of function to the body as a whole as a result of the accident. Dr. Thomas also testified that claimant did not lose the ability to perform any of the essential job tasks listed in the reports of Jerry Hardin and Dan Zumalt.

Dr. Murati was hired by claimant to provide an opinion in this claim. Dr. Murati examined claimant in October 2004 and diagnosed claimant with low back pain secondary to radiculopathy. Dr. Murati concluded that under the AMA Guides (4th ed.) claimant sustained a 10 percent whole person impairment. Dr. Murati agreed with Mr. Hardin's calculations of claimant's task loss, concluding that claimant had a task loss of 59 percent.

As indicated above, Judge Clark gave equal weight to both doctors' opinions, concluding claimant had a five percent whole body functional impairment. The Board finds that in this instance, the testimony of Dr. Thomas is more credible than that of Dr. Murati. Dr. Thomas treated claimant for over three months following the accident, including a period of time after claimant returned to work. Dr. Thomas found no functional impairment and released claimant to return to work with no restrictions or accommodations. The Board concludes claimant is not entitled to functional disability or work disability.

The Board adopts the findings of fact set forth in the Award that are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated January 18, 2005 is modified to the extent that claimant is entitled to no permanent partial disability compensation and no work disability.

It is noted that the Award of Judge Clark incorrectly calculated the number of weeks of temporary total disability compensation to which claimant is entitled, as well as the compensation rate. The Board finds that claimant is entitled to 4.71 weeks of temporary total disability compensation at the rate of \$263.60 per week, or \$1,241.56, all of which is past due and ordered paid in one lump sum, less amounts previously paid.

¹Thomas Depo. at 7.

The Board adopts the other orders of the ALJ to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this _____ day of July, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary K. Jones, Attorney for Claimant
Robert G. Martin, Attorney for Self-Insured Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director